IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.942 OF 2007
IN
SHORT CAUSE SUIT NO.4005 OF 1996

Abbas H. Shahpurwala ... Plaintiff

Vs.

Mohatta Builders & Associates & Ors. ... Defendants

Mr. Vivek Kantawala for the plaintiff.

Ms. Neeta Solanki i/b Mr. K.P. Jain for defendants 3 to 5.

Mr. Jagdeep B. Mitra i/b Mr. A.S. Khatib for defendant 6.

CORAM : SMT. RANJANA DESAI, J.

DATED : AUGUST 9, 2007.

P.C.:-

1. This chamber summons is taken out by defendant 6 for condonation of delay, setting aside order 8/4/2004 passed by the Prothonotary & Senior Master, High Court, Bombay, placing this suit for ex-parte hearing as against him and for taking his written statement on record.

2. I have heard the learned counsel appearing for defendant 6. It is stated in the affidavit in support of the chamber summons that the plaintiff had served the writ of summons on the advocate of defendant 6 on 23/1/1997. The service of writ of summons was overlooked because defendant 6 was in the process of changing his advocate. Thereafter, from 22/3/2000, defendant 6 changed his advocate. According to him, defendant 6 and his advocate were, therefore, not aware of the service of writ of summons and, hence, written statement was not filed. Thereafter, the matter appeared before the Prothonotary on 8/4/2004. The advocate for defendant 6 had filed vakalatnama only in contempt proceedings and, hence, he did not notice the matter which was on the Prothonotary's board. Consequently, on 8/4/2004, the impugned order was passed placing the suit as undefended against defendant 6. Defendant 6 has, therefore, prayed that he may be permitted to file his written statement after setting aside the Prothonotary's order. The explanation offered by defendant 6 appears to be reasonable and acceptable. Case is made out for

grant of relief on payment of costs. Hence, for the reasons stated in the affidavit in support of the chamber summons, order dated 8/4/2004 passed by the Prothonotary & Senior Master is set aside. The written statement of defendant 6 is taken on record subject to defendant 6 paying to the plaintiff costs quantified at Rs.15,000/-. Payment of costs shall be condition precedent for taking the written statement on record. Costs will be paid to the plaintiff within one week from today. Chamber summons is disposed of in the aforestated terms.

[SMT. RANJANA DESAI, J.]